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SUBJECT: SADC TRIBUNAL RULES AGAIN IN FAVOR OF ZIMBABWEAN FARMERS

REF: WINDHOEK 380

11. (U) This report was coordinated with Embassy Harare.

12. (U) On June 6, the SADC Tribunal again sided with the Zimbabwean farmers who are seeking an order to stop the Government of Zimbabwe (GOZ) from expropriating their farms. The court ruled unanimously that the GOZ was in contempt of the Tribunal's November 2008 ruling, which called for an end to Zimbabwe's land reform program, and it referred the case to the SADC Summit for its consideration. End Summary.

13. (U) On June 6, Poloff attended the ruling of the Windhoek-based SADC Tribunal in the case of Michael Campbell and 77 other Zimbabwean farmers, who are continuing their legal battle with the Government of Zimbabwe to stop its controversial land reform program. Last November, the Tribunal ruled in favor of the farmers. Citing the policy as racist and illegal, the four-member panel of judges at that time ordered the GOZ to pay compensation to the white farmers no later than June 2009 as well as "to protect the possession of ownership of the land" (Reftel). The decision, however, has been repeatedly violated.

14. (U) After court came to order on June 6, Deputy Attorney General of Zimbabwe Prince Machaya filed a last-minute appeal to postpone the contempt application by the farmers, claiming the GOZ had not been given adequate time to prepare its case. President of the Tribunal Justice Ariranga Govindasamy Pillay of Mauritius declined the application, to which Machaya replied that he lacked instructions to proceed with the case. The hearing continued, with the Tribunal hearing only the petition of the farmers.

15. (U) In handing down the Tribunal's ruling, Pillay criticized statements made by President Mugabe at his eightieth birthday party at which he dismissed the November ruling as "nonsense" and "of no consequence". Pillay also cited statements made by Zimbabwean Attorney General Johannes Tomana, who had announced that the GOZ would defy the Tribunal's ruling. Furthermore, the judges referred to the speech that Zimbabwean Deputy Chief Justice Luke Malaba delivered at the opening of the 2009 legal year, in which he stated that the Tribunal had no jurisdiction whatsoever over the Campbell case. Pillay then ordered the GOZ to compensate the farmer's legal fees, at an amount to be agreed to by both parties. Barring agreement, he ordered the SADC registrar to step in and determine the financial compensation. In addition, the Tribunal referred the issue of Zimbabwe's refusal to comply with the November ruling to the SADC summit for consideration and appropriate action.

Comment  
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16. (SBU) In accordance with the SADC Tribunal procedures, judicial decisions are expected to be enforced by the SADC Summit. There was skepticism among the observers in the courtroom, however-- which was comprised of members of the diplomatic community and prominent civil society organizations-- that SADC would be inclined to take up the issue with much gusto.

MATHIEU